

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PST Digital LLC)	File No. 0006935227
Late-Filed Application for Renewal and)	
Request for Waiver of Section 1.949 for)	
Broadband PCS Station WPSF623)	

ORDER

Adopted: November 18, 2015**Released: November 18, 2015**

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses a request filed by PST Digital LLC (PST) for waiver of the deadline for filing the above-captioned application to renew the license for Station WPSF623. The expiration date for the license and the deadline for filing an application for renewal was June 23, 2015. Prior to that date, on April 6, 2015, PST filed an application to modify the license for Station WPSF623.¹ Because the modification application did not include a request for renewal, the license expired and the application was dismissed. On September 1, 2015, PST filed an application to renew the license for Station WPSF623, along with a request for waiver of the deadline for filing the application.² For the following reasons, we grant the request for waiver and direct the Mobility Division (Division) to process the associated renewal application.

II. BACKGROUND

2. The license for Station WPSF623 authorizes Broadband Personal Communications Service (PCS) on 10 megahertz of spectrum on Channel Block A in the Des Moines-Quad Cities, Iowa market area (MTA032). PST acquired the license for Station WPSF623 as a partial assignment from Iowa Wireless Services Holding Company in 2001,³ and filed an application in a timely manner to renew the license for Station WPSF623 on April 18, 2005.⁴ That application was granted for a ten-year term ending on June 23, 2015. PST also filed the required second construction notification for the license in a timely manner on May 5, 2005.⁵

3. On March 30, 2015, approximately 90 days before the license for Station WPSF623

¹ FCC File No. 0006739857, filed by PST Digital LLC (Apr. 6, 2015).

² FCC File No. 0006935227, filed by PST Digital LLC, Att. "Request for Waiver and Renewal" (Sept. 1, 2015) (Waiver Request).

³ FCC File No. 0000131818, filed by Iowa Wireless Services Holding Company and PST Digital LLC (May 18, 2000). PST's license for Station WPSF623 was partitioned and disaggregated from Iowa Wireless Service Holding Company's partitioned and disaggregated license under call sign WPOH984. Western PCS Corporation was the winning bidder in Auction No. 4 (Broadband PCS A and B Block) of Channel Block A for the entire MTA032 and was granted a license for that market under call sign KNLF263 on June 23, 1995.

⁴ FCC File No. 0002127774, filed by PST Digital LLC (Apr. 18, 2005).

⁵ FCC File No. 0002150338, filed by PST Digital LLC (May 5, 2005). *See* 47 C.F.R. § 1.946(d) (setting forth the Commission's construction notification requirements). The notification was accepted on May 23, 2005.

expired, the Commission's Universal Licensing System (ULS) issued letters to PST reminding the licensee that its authorization would expire on June 23, 2015, and needed to be renewed.⁶ In response, PST filed an application on April 6, 2015. That application, however, was a modification application that did not also request renewal of the license,⁷ and as a result, the license expired by its own terms on June 23, 2015. ULS then issued a notice dated August 11, 2015, dismissing PST's modification application as defective, explaining that because the license for Station WPSF623 had expired, the application could not be acted upon.⁸ Upon receiving the dismissal notice, on August 24, 2015, PST filed a request for special temporary authority (STA) to allow it to continue operating its station.⁹ The request was granted under call sign WQWI840, renewed once,¹⁰ and currently expires on January 11, 2016.

4. On September 1, 2015, PST filed its application to renew the license along with its waiver request. PST requests waiver of the filing deadline on the grounds that it filed in a timely manner on April 6, 2015, what it intended to be a renewal application, but mistakenly filed it as a modification application.¹¹ After reviewing the request, Division staff asked PST to provide any additional information it had regarding the modification application for Station WPSF623. PST amended its request for waiver on September 21, 2015, by providing a declaration from CTI, Inc., the contractor that filed the modification application. PST's renewal application was accepted for filing on September 16, 2015.¹² No competing applications were filed against the renewal application, and no oppositions were filed against the application or waiver request.

III. DISCUSSION

5. Under Section 1.949(a) of the Commission's rules, licensees must file renewal applications no sooner than 90 days prior to expiration and no later than the expiration date of the license for which renewal is sought.¹³ Licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁴ Licensees may, however, file an application for renewal and request a waiver of the filing deadline if the renewal application is not filed in a timely manner. We may grant a waiver request, pursuant to Section 1.925 of the Commission's rules, if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁵

6. Under its policy regarding late-filed renewal applications in wireless services, the Commission has acknowledged that there may be circumstances when a renewal filing is missed and that

⁶ Renewal Reminder Notice, ULS Reference No. 5970332 (Mar. 30, 2015). Two letters were issued – one to James U. Troop, Esq., McGuireWoods LLP, 1050 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036, and the other to PST Digital LLC, 305 7th Avenue, P.O. Box 308, Sully, Iowa 50251.

⁷ The requested modifications included changes to the contact information on the license.

⁸ Notice of Dismissal, ULS Reference No. 6042525 (Aug. 11, 2015). The dismissal was effective August 8, 2015.

⁹ FCC File No. 0006925739, filed by PST Digital LLC (Aug. 24, 2015).

¹⁰ FCC File No. 0007022480, filed by PST Digital LLC (Nov. 10, 2015).

¹¹ Waiver Request at 1. In particular, PST explained that it “accidentally indicated that the application was being filed as a modification application, instead of the intended renewal application.” *Id.*

¹² Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing, *Public Notice*, Report No. 10789 at 1 (Sept. 16, 2015).

¹³ 47 C.F.R. § 1.949(a).

¹⁴ *Id.* § 1.955(a)(1).

¹⁵ *Id.* § 1.925(b)(3)(i)-(ii).

the subsequent denial of the renewal application and termination of the license would be too harsh a result in proportion to the nature of the violation.¹⁶ To mitigate a harsh result, under the Commission's policy regarding late-filed renewal applications in wireless services, where a renewal application is filed up to 30 days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules, but the licensee may be subject to enforcement action.¹⁷

7. In cases where the renewal application is filed more than 30 days after the license expiration date, however, the waiver request will not be routinely granted, is subject to stricter review, and also may be accompanied by enforcement action.¹⁸ In determining whether to grant a waiver request, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee's performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.¹⁹ Because PST filed its pending renewal application approximately two months after the license for Station WPSF623 expired, its request for a waiver is subject to this stricter level of review.

8. Upon reviewing the facts and circumstances in this case, we find that grant of PST's request for waiver of the deadline for filing a renewal application for Station WPSF623 is warranted. In its waiver request, PST states that "[w]ith the intention of renewing the License [for Station WPSF623] in a timely manner, PST's contractor prepared and filed FCC Form 601 for the License on April 6, 2015, well in advance of the renewal deadline."²⁰ PST further explains that "[t]he application PST filed, however, accidentally indicated the application was being filed as a modification application, instead of the intended renewal application."²¹

9. To support its claim, PST amended its application to offer the declaration of Dennis J. Charipar, President of Charipar Telecommunications Industries Inc.,²² the contractor that filed the April 6, 2015 modification application. Mr. Charipar declaration states that "[w]ith the intention of renewing the License [for Station WPSF623] in a timely manner, I prepared and, with PST's authorization, filed FCC Form 601 for the License on April 6, 2015, well in advance of the renewal deadline."²³ Mr. Charipar further states, under penalty of perjury, that "I believed that I had filed the necessary application to renew the License."²⁴ Mr. Charipar concludes that "[o]nly subsequently did I learn that, despite the intent to submit a renewal application, I had incorrectly and accidentally indicated that the form was being filed as a modification application."²⁵

¹⁶ In the Matter of Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485, ¶ 22 (1999) (*ULS MO&O*).

¹⁷ *Id.*

¹⁸ *Id.*; see, e.g., *Waver Runner, LLC, a Wholly-Owned Subsidiary of Choice Holdings LLC, Order*, 28 FCC Rcd 5158 (EB 2013) (adopting a consent decree agreeing to a voluntary contribution of \$11,000 for unauthorized operation and failure to submit a renewal application in a timely manner for a broadband PCS license).

¹⁹ *ULS MO&O*, 14 FCC Rcd at 11485, ¶ 22.

²⁰ Waiver Request at 1.

²¹ *Id.*

²² FCC File No. 0006935227, filed by PST Digital LLC (Sept. 21, 2015) (Ex. 3: Declaration of Dennis J. Charipar).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

10. We have repeatedly held that the filing of a timely, but defective, renewal application warrants a waiver to permit the late filing of a subsequent renewal application where the licensee acted in good faith and moved promptly to file a proper renewal application after learning that the original attempt fell short.²⁶ In *Paging Systems, Inc.*, the Division granted a request for waiver of the filing deadline for renewal applications where Paging Systems, Inc. (Paging Systems) inadvertently filed modification (MD), not renewal/modification (RM), applications prior to the license expiration dates.²⁷ After the licenses expired, Paging Systems amended its modification applications to add an attachment requesting that the applications be treated as renewal/modification applications, rather than just modification applications. Paging Systems stated in its amendment that it had intended to file renewal/modification applications, but inadvertently filed modification applications.²⁸ Because modification applications cannot be amended in ULS to request license renewal, Paging Systems filed applications to renew its licenses, and requested waivers to permit late filing of the applications.²⁹ Finding that Paging Systems had acted in good faith to file its renewal applications in a timely manner, the Division granted its waiver requests.

11. We similarly find that PST has demonstrated that it intended to retain the license for Station WPSF623 and attempted in good faith to comply with Commission rules. PST submitted a modification application during the time frame allowed for filing renewal applications prior to the expiration date of the license, and in its request for waiver, explains that it intended to file a renewal application. But for the error in designating the application as a modification, rather than a renewal, the renewal application would have been filed in a timely manner.

12. PST also contends in its waiver request that it “only just learned of the filing error and the expiration of the License, after its contractor received a notice letter from the FCC, which dismissed the modification application” and “[s]ince learning of this renewal problem, PST has worked quickly and diligently to engage counsel for assistance filing an application for Special Temporary Authority ... and the instant renewal application and waiver request.”³⁰ We agree. Once notified of its error, PST took immediate action – it filed an STA request and a renewal application for Station WPSF623 after it received notice that its defective modification application had been dismissed. The fact that PST submitted the modification application within the 90-day period during which the renewal application was due, along with its immediate correction upon notice of the error, is evidence that PST fully intended to file a renewal application prior to expiration of the station’s license.

13. We also note that the Commission has expressly rejected certain reasons, in and of themselves, for a licensee’s inadvertent failure to file a renewal application in a timely manner, including “simple forgetfulness” and “administrative oversight,”³¹ and has emphasized that a licensee is fully

²⁶ *Mobile Telephone & Paging, Inc., Order*, 28 FCC Rcd 971 (MD WTB 2013) (*Mobile Telephone*); James H. Barker, Esq., Cricket Licensee (Reauction), Inc., *Letter*, 24 FCC Rcd 3298, 3302-03 (MD WTB 2009) (*Cricket Reauction*); City of Dardanelle Fire Department, *Order*, 17 FCC Rcd 10901 (PSPWD WTB 2002); San Bernard Electric Cooperative, Inc., *Order on Reconsideration*, 17 FCC Rcd 16111 (PSPWD WTB 2002); Kent H. Sager, *Order*, 16 FCC Rcd 21353 (CWD WTB 2001); KNTV License, Inc., *Order*, 16 FCC Rcd 20440 (PSPWD WTB 2001); Navopache Electric Cooperative, Inc., *Order*, 16 FCC Rcd 11870 (PSPWD WTB 2001); City of Henderson, Nevada, *Order*, DA 99-2005 at ¶ 7 (PSPWD WTB 1999) (*City of Henderson*).

²⁷ *Paging Systems, Inc. Applications to Renew Licenses for Stations WPKC922 and WPKC923, Order*, 29 FCC Rcd 5913 (MD WTB 2011), *aff’d on reconsideration*, 26 FCC Rcd 16175, 16177, ¶ 6 (MD WTB 2011) (*PSI Order*).

²⁸ *PSI Order*, 29 FCC Rcd at 5913, ¶¶ 2-3.

²⁹ *Id.* at 5913, ¶ 3.

³⁰ Waiver Request at 1.

³¹ *ULS MO&O*, 14 FCC Rcd at 11485, ¶ 21. The Commission rejected the view that turnover in recordkeeping personnel, failure to check computer records, or simple forgetfulness are valid excuses, in and of themselves, for failure to file a timely renewal application. *Id.*

responsible for knowing the terms of its license and filing a timely renewal application.³² We have previously found, however, that a distinction exists between a licensee that unsuccessfully attempts to file a renewal application in a timely manner, and a licensee that takes no action until after the filing deadline.³³ Licensees that do not take any action until after the filing deadline have almost always simply forgotten about or overlooked the deadline.³⁴ We agree with PST that it did not simply forget to file or overlook the deadline for filing its renewal application.³⁵ PST knew the terms of the license and took good-faith action to meet those terms and to comply with Commission rules.

14. In addition to its good-faith effort to file a renewal application in a timely manner, the record shows that PST has previously complied with Commission rules. PST filed, in a timely manner in 2005, both a renewal application for the latest license term for Station WPFS623 as well as the required second construction notification for the station, and review of the license information in ULS demonstrates that PST has consistently met the regulatory requirements for its other licenses.³⁶ While an applicant is always responsible for making sure applications are complete and correct, we believe PST's diligent efforts to file a timely renewal application prior to the scheduled expiration date for its license and its prompt attempt at correcting its error does not warrant a result as harsh as license termination for Station WPFS623. We further note that no one has opposed PST's application or waiver request. Consequently, we are persuaded, under the facts and circumstances presented, that application of Section 1.949 of the Commission's rules would be unduly burdensome and that grant of PST's waiver request is warranted. In granting PST's waiver request, we direct Division staff to process PST's renewal application filed September 1, 2015.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, the request for waiver filed on September 1, 2015, by PST Digital LLC in association with application File No. 0006935227 IS GRANTED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, the renewal application File No. 0006935227 submitted

³² *Id.*

³³ *Mobile Telephone*, 28 FCC Rcd at 976, ¶ 15 (citing *Cricket Reauction*, 24 FCC Rcd at 3305-06; and State Contracting and Engineering Corporation, *Order on Reconsideration*, 18 FCC Rcd 1685, 1689, ¶ 11 (PSPWD WTB 2003)); *cf.* In the Matter of Interstate Power and Light Co. Requests for Extension of Time to Construct Private Land Mobile Radio Stations, *Order*, 18 FCC Rcd 11051, 11057, ¶ 17 (PSPWD WTB 2003) (granting a request for extension of time to construct where the licensee submitted extension requests four times, twice before the construction deadline, and noting that "[t]here is a clear distinction between a licensee that unsuccessfully attempts to timely file and one who submits nothing until the time expires").

³⁴ *Mobile Telephone*, 28 FCC Rcd at 976, ¶ 15 (citing *Cricket Reauction*, 24 FCC Rcd at 3305-06; and *City of Henderson*, 14 FCC Rcd at 16159, ¶ 7).

³⁵ See Waiver Request at 2-3 (stating once again that "PST did not simply forget to file its renewal application," and that "as soon as PST became aware of the problem with its renewal application, PST made diligent efforts to take corrective action by obtaining counsel, filing an STA request, and submitting this renewal application and waiver request to the Commission").

³⁶ According to Commission licensing records, Sully Telephone Company, which wholly owns PST, holds two active licenses, and PST holds three active licenses in addition to the license for Station WPSF623. Sully Telephone Company has filed construction notifications for its licenses in a timely manner and PST has filed several applications to register link/locations for its 3650-3700 MHz license.

on September 1, 2015, by PST Digital LLC SHALL BE PROCESSED in accordance with Commission rules.

FEDERAL COMMUNICATIONS COMMISSION

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